WHAT LAW GOVERNS THE QUESTION OF PURCHASE FOR VALUE OF NEGOTIABLE INSTRUMENTS

A case recently decided by the Supreme Court of Wisconsin raises the question whether the law of the state governing the contract of the maker of negotiable paper, or the law of the state where such paper is acquired, determines what constitutes a purchaser for value. Suit was brought in Wisconsin to foreclose mortgage bonds issued by a Wisconsin corporation in that state. The bonds were void in the hands of the original holders for fraud and want of consideration, but were valid in the hands of *bona fide* holders in due course. A accepted some of the bonds in New Mexico from B as collateral security for an antecedent debt. Under the law of Wisconsin such a transfer would not constitute a transfer for value.[1] A offered evidence to show that he was a holder for value under the law of New Mexico, but the evidence was excluded, the court holding that Wisconsin law governed. *Badger Machinery Co. v. Columbia, etc., Lt. & Power Co.* (1917, Wis.) 163 N. W. 188.

Several views have been expressed with regard to the above question. According to one view, the matter being one of general commercial law, the law of the forum should govern.[2] In the federal courts it is the settled rule that in matters of general commercial law, or of general instead of local law, the federal doctrine will be applied and not the rule obtaining in any particular state.[3] This doctrine was established by the Supreme Court of the United States, no doubt, for the purpose of creating, so far as it lay within its power, a uniform body of law relating to commercial transactions. Some of the state courts have assumed to exercise the same prerogative of following their own law in the above class of cases, although they are not in a position to allege a similar justification or excuse.[4] If the law of a

case, is not responsible, as Sec. 124, N. I. L., avoids an altered instrument except as against a party who has made, authorized or assented to the alteration. While this provision may fix the liability of the depositor as a party to a negotiable instrument to subsequent purchasers of the instrument, it is submitted that the section does not determine his liability arising out of the special relation of bank and depositor.

[1] Wis. Stat. 1898 Supp. sec. 1675-51.

[2] Professor Ames would apply the law of the forum because, in his opinion, the question is one of commercial law and not one of jurisdiction. 2 Ames, *Cases on Bills and Notes*, 806.

[3] *Swift v. Tyson* (1842, U. S.) 16 Pet. 1, 10 L. Ed. 865; *Baltimore & Ohio R. Co. v. Baugh* (1893) 149 U. S. 368, 13 Sup. Ct. 914, 37 L. Ed. 772.

[4] *Franklin v. Twogood* (1868) 25 Iowa, 520; *St. Nicholas Bank v. State Nat. Bank* (1891) 128 N. Y. 26, 27 N. E. 849; *Roads v. Webb* (1898) 91 Me. 406, 40 Atl. 128; *Alabama Mid. Ry. Co. v. Guilford* (1903) 119 Ga. 523, 46 S. E. 655. The great majority of states hold to the contrary. See, for example: *Sykes v. Citizens National Bank* (1908) 78 Kans. 688, 98 Pac. 206; *Forepaugh v. Delaware, L. & W. R. Co.* (1889) 128 Pa. St. 217; 18 Atl. 503; *Limerick Nat. Bank v. Howard* (1901) 71 N. H. 13, 51 Atl. 641.

particular state is applicable under the rules of the Conflict of Laws of the forum, there is no good reason why these rules should be set aside when the matter in question is one of common law or of general commercial law. The rules of the Conflict of Laws are based upon considerations of justice, and if in consequence of such considerations the law of a foreign state is to control, it goes without saying that the nature of the subject matter involved, whether it be of statutory origin, or one of common law, or of general commercial law, should be of no consequence.

Another view is to the effect that the law of the state where a negotiable instrument is acquired by the holder should control the question of "value."[5] This law governs, of course, the rights of the holder against the party transferring or negotiating the instrument to him. But why should it control as regards remote parties, be they indorsers, acceptors, or makers of promissory notes or negotiable bonds? Should not the nature of their contracts and the extent of the obligations assumed by them remain fixed, unaffected by the fact that the instrument may circulate in states or countries where a different law may prevail?

The third view answers the question just stated in the affirmative.[6] This view is clearly correct, both on theory and from the standpoint of expediency. The principle of certainty which underlies the whole subject of bills and notes demands that the liability of each party be fixed by one law. Whether the contract of the maker of a promissory note or negotiable bond should be subject, on correct theory, to the law of the place where such instrument is issued, that is, delivered, or to the law of the place where it is payable, or even to the law of the place where the signature was affixed or where the company had its seat, need not be determined, as in the instant case all of these places coincided.[7] Where the law of the place of payment differs from that of the place of issue the Supreme Court of Wisconsin applies the former law[8] and in so doing it follows the great weight of authority in this country.[9]

The tenor of the maker's contract must naturally be ascertained by reference to the law governing his contract and cannot vary with respect to the different holders of the instrument. This law will

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[5] *Brook v. Vannest* (1895, Ct. App.) 58 N. J. L. 162, 33 Atl 382.

[6] *Woodruff v. Hill* (1874) 116 Mass. 310; *Houston v. Keith* (1911) 100 Miss. 83, 56 So. 336.

[7] For a discussion of this problem, see Lorenzen, *The Rules of the Conflict of Laws Applicable to Bills and Notes*, 1 MINN. L. REV. 239-256.

[8] *Brown v. Gates* (1904) 120 Wis. 349, 97 N. W. 221, 98 N. W. 205; *International Harvester Company v. McAdam* (1910) 142 Wis. 114, 124 N. W. 1042.

[9] *Brabston v. Gibson* (1850 U. S.) 9 How. 263, 13 L. Ed. 131; *Mason v. Dousay* (1864) 35 Ill. 424; *Hunt v. Standart* (1860) 15 Ind. 33; *Berger v. Farnham* (1902) 130 Mich. 487, 90 N. W. 281.

determine the nature of the instrument that is executed and the defenses that may be available to him.[10] If the controlling law allows the maker to set up a personal defense even against a holder in due course, such law should be followed in every other jurisdiction, although the municipal law of the forum and of the place where the plaintiff acquired the instrument may be to the contrary.[11] The question of what constitutes a holder for value concerns the extent of the defendant's obligation. Has the defendant agreed that he will not avail himself of any personal defense as against a party who may acquire the instrument as collateral security for an antecedent debt? In accordance with the above point of view the law governing his contract in general should furnish the answer to this question, and this is the rule which is supported by the weight of authority in this country. It appears to be also the view followed by the principal case.

The case of *Embiricos v. The Anglo-Austrian Bank*[12] is not inconsistent with the above conclusion. That case in its broadest interpretation holds only that a title acquired in a mode recognized by the law of the place of transfer is binding upon the maker, though such transfer does not conform to the municipal law of bills and notes of the state governing the maker's contract. It is a qualification of the ordinary principles of the Conflict of Laws applicable to bills and notes which is based upon the analogy of the law governing chattels.

E. G. L.

INDIVIDUAL LIABILITY OF THE OFFICERS OF A NON-COMPLYING FOREIGN CORPORATION

It is not good to be a non-complying foreign corporation; to be a part of one is worse. There are statutory fines for the corporation doing business without obtaining authority in the prescribed fashion. Many courts hold contracts with such a corporation enforceable against it, but not in its favor.[1] Officers and directors are sometimes made sureties for corporate debts.[2] And a few states, with which Illinois

[10] *Brabston v. Gibson, supra.*

[11] *Ory v. Winter* (1826, La.) 4 Mart. N. S. 277.

[12] (C. A.) [1905] 1 K. B. 677, 74 L. J. K. B. 326.

[1] *United Lead Co. v. Reedy Elevator Mfg. Co.* (1906) 222 Ill. 199, 78 N. E. 567; *Parke, Davis and Co. v. Mullett* (1912) 245 Mo. 168, 149 S. W. 461, approved in the principal case as exemplifying "one of the ordinary principles of law"; 25 L. R. A. 569, and cases cited. But see as to estoppel of one who deals with such a corporation, *Second Natl. Bk. v. Hall* (1878) 35 Oh. St. 158, 166; and note 14*a infra.*

[2] *Slater v. Taylor* (1909) 241 Ill. 102, 89 N. E. 271. And the agent as well as the corporation may be subject to a statutory fine. Wis. Stat. 1911, chap. 85, sec. 1770*b* II.